

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of San Diego
Gas & Electric Company and Southern
California Gas Company for Authority to
Integrate Their Gas Transmission Rates,
Establish Firm Access Rights, and Provide Off-
System Gas Transportation Services

A.04-12-004

**RESPONSE OF THE INDICATED PRODUCERS
TO PETITION TO MODIFY D.06-12-031**

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June 22, 2007

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Pursuant to Rule 16.4(f) of the Commission's Rules of Practice and Procedure, the Indicated Producers¹ submit these comments on the Petition to Modify D.06-12-031 filed by the Department of General Services (DGS) and the Southern California Generation Coalition (SCGC) (collectively the Joint Parties) on May 23, 2007.

In their petition, the Joint Parties requested a modification to D.06-12-031 to limit how California producers could use the Firm Access Rights (FARs) acquired in Step 1 of the open season capacity allocation process. The proposal would prevent producers from re-contracting Step 1 FARs and eliminate the ability of producers to use FARs on an alternate basis at another receipt point.²

The petition must be rejected on the following grounds:

1. The Joint Parties' allegations lack factual support.

¹ The Indicated Producers is an *ad hoc* coalition which includes, for the purposes of these comments, Aera Energy LLC, BP Energy Company, BP America Inc. (including Atlantic Richfield Company), ConocoPhillips Company, Chevron U.S.A. Inc., Midway Sunset Cogeneration Company (an affiliate of Aera Energy) and Occidental Energy Marketing Inc.

² Joint Parties' Petition to Modify, at 3.

2. The Joint Parties failed to raise this issue during the FAR proceeding when Step 1 set-asides were thoroughly discussed.
3. SCE raised a similar concern with regard to the Step 1 set-asides for core customers, which the Commission addressed on a broad basis in D.06-12-031.
4. The proposed restriction would create two classes of FARs that would be sold at the same rate but carry materially different costs and value in the market.
5. The Joint Parties' proposed restriction discriminates against California producers.

It is interesting that one of the critiques of the FAR proposal advanced by the Joint Parties in A.04-12-004 was that the new program would restrict customer flexibility. Historically, system users, including California producers, could choose to have gas delivered through any receipt point without having to obtain access rights. Both DGS and SCGC recommended rejection of the FAR program. DGS stated the FAR proposal will “...*only complicate and add costs to the delivery of gas in the SoCalGas system.*”³ SCGC similarly commented that FAR should be rejected because the current structure already “*provides customers with freedom and flexibility to nominate gas supplies without unnecessary restrictions.*”⁴

The ALJ and Commission gave considerable weight to maintaining this historic customer flexibility within the new FAR framework. FAR holders will have an option to use their rights at the designated receipt point, have alternate rights to bring in gas through receipt points within the same zone or even to bring in gas through receipt points outside the FAR holder's zone. Market participants

³ Opening Concurrent Brief of the Department of General Services, (09/14/06), at 2.

⁴ Southern California Generation Coalition Opening Brief, (09/14/06), at s-1.

will also be able to turn to the secondary market to meet their needs.⁵ The decision balanced the need to provide certainty in the form of receipt point access rights along with strong customer support for maintaining flexibility. Yet, the Joint Parties now seek to implement a proposal that would add restrictions that are not now, nor in the past, been necessary and reduce flexibility for a single group of rights holders. The petition must be rejected.

I. THE JOINT PARTIES' REQUEST LACKS FACTUAL SUPPORT.

As stated in the petition, the Joint Parties were “surprised” to learn at the tariff workshop and in the advice letter protest process that D.06-12-031 had not placed any restrictions on the California producers’ use of Step 1 set-aside capacity. As provided in that decision, Step 1 set-asides will be offered to retail and wholesale core customers, Core Transportation Aggregators, holders of certain long-term contracts, and California gas producers for the three-year term of an open season.⁶ Producers will be allowed to re-contract the FARs obtained in the open season to other receipt points, just like any other holder of FARs.⁷

The Joint Parties asked that D.06-12-031 be modified so that FARs acquired by California producers in Step 1 could not be used at any other receipt point other than the point where a producer’s gas is delivered to SoCalGas. The Joint Parties proposed an amendment to language in D.06-12-031 to restrict FAR use:

... Accordingly, firm access rights obtained through the set-aside for California producers shall apply only to the receipt points where the gas

⁵ D.06-12-031, at 78-79.

⁶ D.06-12-031, at 14.

⁷ Joint Parties’ Petition to Modify, at 2.

production is delivered into the system. Firm access rights obtained through the producer set aside may not be used as a basis to obtain alternate firm access rights at other receipt points.⁸

No justification for this change was provided in the petition other than the speculation that in the future (without this change) California producers would shut-in their production to use FARs at alternate receipt points rather than deliver gas into the SoCalGas system.⁹ As provided in the Commission's Rules of Practice and Procedure for submitting petitions to modify, Rule 16.4(b) requires the petitioner to provide justification for the relief requested and *"[a]ny factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit."* The Joint Parties did not include any data to support its allegation, its causes and effects, or the detriment to occur as a result. The Joint Parties did not provide any new analysis of the FAR record or describe new circumstances arising after adoption of D.06-12-031 that would support their proposed change. The petition simply seeks a modification to D.06-12-031 based purely upon speculation. It is impossible to evaluate the Joint Parties' assertions without the necessary factual support so the petition must be rejected.

II. THE JOINT PARTIES HAD AN OPPORTUNITY TO RAISE THEIR CONCERN DURING THE FAR PROCEEDING BUT DID NOT.

The proposal to provide California producers with a Step 1 set-aside was submitted as part of the utilities' initial application and testimony filed on

⁸ Joint Parties' Petition to Modify, at 3.

⁹ Joint Parties' Petition to Modify, at 2.

December 2, 2004. The proceeding was subsequently placed on two tracks, with an initial focus on the economic integration of the SoCalGas and SDG&E backbone transmission systems. Later, FAR testimony was updated for the second phase of the proceeding, and again, the same proposal for a Step 1 California producer set-aside was made in the utilities' May 5, 2006 filing.¹⁰

Over the two years from the time the application was filed and a final decision was adopted, the Joint Parties had an opportunity to raise the specific concern addressed in the petition but did not. In Phase II (the FAR portion of the case) DGS did not present a witness or testimony, the California producer set-aside was not addressed in DGS' opening brief filed September 14, 2006 or in comments on the proposed and alternate decisions filed November 20, 2006. SCGC's specific concern regarding producer set-asides focused on the utilities' proposal to deny ExxonMobil parity treatment for a Step 1 set-aside.¹¹

The Joint Parties had an opportunity to raise and fully air their concern during the course of the hearing. Substantial efforts were devoted to consideration of the capacity allocation process, including the Step 1 set-aside for California producers. The California producer Step 1 set-aside was not buried or obscured by other issues and D.06-12-031's treatment of producer set-asides should not come as a "surprise" to any of the parties participating in this case. In absence of record and factual support, the petition must be rejected as the issue was not raised in a timely manner.

¹⁰ See the May 5, 2006 testimony of numerous SoCalGas witnesses, including Rodger Schwecke, at 9, describing the California producer Step 1 set-aside.

¹¹ Southern California Generation Coalition Reply Brief, (09/27/06), at 40.

III. SCE RAISED A SIMILAR CONCERN IN THE PROCEEDING THAT WAS BROADLY ADDRESSED IN D.06-12-031.

Southern California Edison Company (SCE) raised a concern similar to the Joint Parties' regarding the core's use of Step 1 set-aside capacity. Referring to the "overly-generous" Step 1 allocation to core customers that could result in the core holding excess capacity beyond their needs,¹² SCE asked the Commission to reject the proposal to allow Step 1 set-aside holders to re-contract those rights to other receipt points.¹³ Since set-aside rights were given to certain parties on the rationale that they need to be able to match their existing upstream contract rights, SCE argued that holders of set-aside rights should be prohibited from re-contracting the capacity to other receipt points where they do not have upstream rights. According to SCE, allowing such re-contracting would permit the set-aside holders to use rights received for reliability purpose for "profit-making." SCE proposed that set-aside holders (identified as core customers, wholesale customers and certain Commission-approved receipt point specific long-term contracts but not California producers) be prohibited from selling or trading the FAR received as a set-aside.

D.06-12-031 quoted SoCalGas/SDG&E statements that there may be instances in which the core could benefit from acquiring gas at a receipt point not covered by a set-aside and that *"[r]estricting the core's ability to trade or sell the FAR set-aside could disadvantage the core in that situation."*¹⁴ The decision declined to adopt SCE's proposed prohibition in order to *"provide as much*

¹² Opening Brief of Southern California Edison, (09/14/06), at 17.

¹³ Exh. 109, Testimony of Dr. Michael S. Alexander, (07/14/06), at 5-6.

¹⁴ D.06-12-031, at 98-99.

*trading flexibility as possible,”*¹⁵ for the nascent FAR program. To address SCE’s “profit-making” concern, D.06-12-031 additionally established a secondary market price cap of 125% of the FAR reservation charge in part to “...*ensure that a holder of a FAR set-aside does not unduly profit from their set-aside.*”¹⁶ The decision was clear in its conclusion that SCE’s proposed restriction could disadvantage a particular customer group and would reduce the flexibility of the new FAR program. The Joint Parties’ new proposal must be rejected on the same grounds.

IV. THE JOINT PARTIES’ PROPOSED MODIFICATION WOULD INCREASE PRODUCER COSTS AND DECREASE THE VALUE OF PRODUCER FARs.

The impact of the Joint Parties’ restriction on California producers is two-fold, (1) the value of FARs acquired in Step 1 is reduced because of the restriction on re-contracting, and (2) the ability to recover reservation fees paid for unused FARs is uncertain but would likely lead to increased costs. Producers will pay for the reservation rights at the same rate as other FAR holders do – the set-aside is not free.¹⁷ Yet, the Joint Parties propose to restrict the ability of producers to attempt to offset some of the reservation charges should production levels decline or operational upsets preclude delivery into the SoCalGas system on a daily, seasonal or annual basis.

Consider, hypothetically, the consequences of adopting the Joint Parties’ proposal. Assume a California producer acquired FARs in the amount of 50,000

¹⁵ D.06-12-031, at 99.

¹⁶ D.06-12-031, at 107.

¹⁷ D.06-12-031, at 90, “...*anyone holding a FAR would pay the reservation charge of five cents per Dth per day on a monthly basis.*”

dth/d on Line 85. The producer would pay 5¢ per dth per day -- \$2,500 as a reservation fee. Should an operational upset occur where the producer was unable to deliver natural gas to Line 85, the producer would still pay \$2,500 per day. If the situation were to persist for several days, the producer would pay for its unused reservation and would not be permitted to trade the rights in the market. Similar circumstances could arise for a producer under a less dramatic scenario as an operational upset, because of daily, seasonal or annual fluctuations in production levels. As recommended by the Joint Parties, the producer should be precluded from using their FAR set-aside at any other receipt point. While the proposal was not clear, it seems to imply that the producer would not even have an opportunity to use the secondary market to recover some or all of the costs of the reservation rate paid to SoCalGas for unused FARs at any point during the three-year term of the Step 1 set-aside.

Flexibility in the acquisition and secondary sale of FARs is required for producers. Most of the natural gas produced in southern California is associated with crude oil production. The two are closely linked and frequently, natural gas production is impacted by oil extraction. Natural gas production levels also naturally fluctuate due to underground reservoir behavior, wellhead pressures, changes in ambient temperature of gathering lines, equipment cycling and surface/subsurface operational problems; production can decline as particular fields are depleted. Operational upsets have occurred in the past and it is a realistic expectation that upsets will occur in the future. As recently experienced, periods of heavy rain and mudslides resulted in utility pipeline damage and the

need to temporarily shut down pipelines for repairs or reconnection. Flexibility is required to manage both temporary upsets and changes in field production levels that can and will occur over the term of the three-year Step 1 set-aside.

The impact of the Joint Parties' proposal is to increase the cost to California producers and decrease the value of FARs because of limitations on the secondary trading of unused FARs. The result is financially significant and inequitable.

V. THE JOINT PARTIES' PROPOSED MODIFICATION DISCRIMINATES AGAINST CALIFORNIA PRODUCERS.

D.06-12-031 adopted the utilities' proposal to offer (1) California producers, (2) retail and wholesale core customers, (3) Core Transportation Aggregators and (4) holders of certain long-term contracts, an option of obtaining FARs as part of the Step 1 of the capacity allocation process.¹⁸ The Joint Parties have not proposed that the restriction on California producers apply to any other holder of Step 1 set-aside rights and have not fully explained why California producers should be singled out for more restrictive treatment.

D.06-12-031 adopted a system of FAR that included an unbundled FAR reservation charge, several "intra-shipper issues," and selected elements of the Joint Proposal because it was "*in the interests of all market participants and consumers.*"¹⁹ The decision was described as a "balanced approach"²⁰ to the various opinions and competing interests advanced in this lengthy case. The Joint Parties' proposal, if adopted, would upset the balance and place restrictions

¹⁸ D.06-12-031, at 14-15.

¹⁹ D.06-12-031, at 89.

²⁰ D.06-12-031, at 3.

on one particular set of market participants without justification for the discriminatory treatment. As Mr. Beach testified on behalf of IP, it is critical that California producers have assurance that they can move their produced gas to the market.²¹ Likewise, SoCalGas' Mr. Schwecke observed that these set-asides are necessary to give effect to the producers' existing access agreements and "*to ensure that their gas would be continued to be delivered as it has historically.*"²²

Restricting the use of the rights to only those points of interconnection between production and the utility's receipt point would create two classes of rights. California producers would pay the same price for their rights, but would not be entitled -- like other customers, to use those rights as their operations dictated. The proposal results in discriminatory treatment and must be rejected.

VI. CONCLUSIONS

The Step 1 set-asides for California Producers are reasonable. Most in-state producers maintain one interconnection with the utility and have few, if any alternatives. Producers generally do not have the ability to shift deliveries from one receipt point to another as other utility customers might, obtain access to other competitive markets, or use off-system storage facilities to sell, transport or store in-state production. It is critical that the Step 1 set-aside be maintained in the same form adopted in D.06-12-031.

The Joint Parties' tardy, unsupported statement that California producers would intentionally shut-in natural gas produced in association with crude oil is unsupported and unfounded. D.06-12-031 has provided for limitations on the

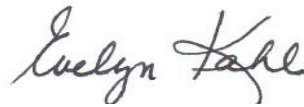
²¹ See Exh. 43, Beach/Watson/IP/CCC/CMTA.

²² Tr. 875, Schwecke/SoCalGas/SDG&E.

amount of Step 1 set-asides offered to California producers and limitations in the form of a secondary market cap. This treatment fully addresses the Joint Parties' concerns. For these reasons, the Joint Parties' petition must be rejected.

Respectfully submitted,

ALCANTAR & KAHL

A handwritten signature in cursive script, reading "Evelyn Kahl".

Evelyn Kahl

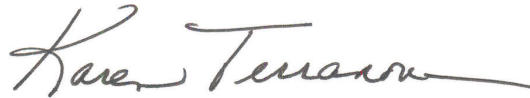
Counsel to Indicated Producers

Dated: June 22, 2007

CERTIFICATE OF SERVICE

I, Karen Terranova hereby certify that I have on this date caused the attached **Response of the Indicated Producers to Petition to Modify D.06-12-031** in A04-12-004 to be served to all known parties by either United States mail or electronic mail, to each party named in the official attached service list obtained from the Commission's website, attached hereto, and pursuant to the Commission's Rules of Practice and Procedure.

Dated June 22, 2007 at San Francisco, California.

A handwritten signature in cursive script, reading "Karen Terranova", written in dark ink.

Karen Terranova

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